

Internal Revenue Service

memorandum

date: May 27, 1999

to: Regional Chief Compliance Officers
District Director, Key District Offices (EP/EO)
Information Copy: EP/EO Division Chiefs

from: Director, Exempt Organizations Division CP:E:EO
signed Marcus S. Owens

subject: Used Car Donation Programs

We have recently seen an increasing number of advertisements for used car donations to charity. These advertisements, placed by the charities themselves, or by for-profit companies working under various kinds of contractual arrangements with the charities, promise a charitable contribution deduction in an amount equal to "the full Blue Book value" of a contribution of a used automobile.

We are particularly concerned about two claims being made in some of the advertising. In one instance, a charity is entering into what amounts to a royalty arrangement with a for-profit company. In return for a fee, perhaps even a flat monthly or annual fee, a for-profit company will conduct the entire campaign with little or no involvement by the charity, starting with the solicitation of used auto donations, followed by the vehicle pickup and the final disposition. To be deductible as a gift "to" charity, used cars must, in actuality be given "to" the charity or, at the least, an agent of the charity. The royalty arrangement discussed earlier in the paragraph does not amount to an agency agreement because it lacks the supervision that agency entails. Thus, the veracity of a statement that contributions are deductible may be challenged and, indeed, the donor would not be entitled to a charitable deduction in any amount.

A second serious matter relates to the hyperbole that appears in some of the advertising. In some cases, "full Blue Book" value deductions are promised where used cars are in poor or inoperable condition. The term "Blue Book" appears to describe many valuation lists prepared by many different companies. Generally, however, these lists only value used cars "in running condition."

We are concerned that some of this advertising is misleading or, in some instances, false, and is being used inappropriately. Key districts should be alert to the advertising that is being conducted in their districts and should consider conducting examinations if the facts warrant. Key districts should consider using the tax shelter promotion penalties in appropriate cases. It is also possible that some abusive contractual arrangements may result in excessive private benefit and thus jeopardize the exempt status of the charities involved.

Use of tax shelter promotion penalties where there is misrepresentation of information about deductibility of contributions is discussed in Topic M. Application of IRC 6700 and 6701 to Charitable Contribution Deductions of the FY 1999 CPE text. Under IRC 6700, a distinct type of conduct, making a false

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or fraudulent statement about the tax treatment of a contribution, may be involved in used car donation advertising and may potentially trigger the penalties.

Key districts should also be aware that state or local authorities often regulate fundraising materials and organizations. As part of the state registration process, it is possible that the fund raisers must submit copies of their contracts with charities. We recommend that key districts establish contact with appropriate state regulatory offices to obtain copies of relevant contracts.

In addition, in appropriate cases, referrals of individual donors to the Examination function should be considered.

If you have any questions concerning the preceding, please call me at 202-622-8200 or you may have a member of your staff call Dave Jones at 202-622-8095 or Tom Miller at 202-622-5656.